IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:08.11.2006

CORM:

THE HON'BLE MR. JUSTICE P. SATHASIVAM
and
THE HON'BLE MR. JUSTICE S. TAMILVANAN

Writ Petition No.2567 of 1998

P.V. Devakumar .. Petitioner

Vs.

The Member Secretary
Chennai Metropolitan Development
Authority, Thalamuthu Natarajan
Maligai, No.8,Gandhi Irwin Salai
Egmore, Chennai 8. .. Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of certiorarified mandamus as stated therein.

For petitioner : Mr. M. Baskar
For respondent : Mr. J. Ravindran

ORDER

(Order of the Court was made by P. SATHASIVAM,J.)

The prayer in the writ petition is as follows:
"to issue a writ of certiorarified mandamus or any other writ or order or direction in the nature of Writ calling for the records relating to the orders of the respondent in his Letter No.B1/21464/97 dated 1.10.97 and the consequential order passed in his Letter No.B1/24832/97 dated 10.11.97 and quash the same and to direct the respondent to grant planning permission to the petitioner's property at Door No.19, I Main Road, Gandhi Nagar, Adyar, Chennai 600 020 in T.S.No.74, Block No.37 of Kottur Village, Chennai as per the then Development Control Rules in existence which allowed Floor Space Index to 2.00 m. for mixed residential zone. "

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2. According to the petitioner, he purchased the property at Door No.19, I Main Road,Gandhi Nagar, Adyar, Chennai 20, by way of a registered sale deed for valid consideration. In order to develop the above said property, he approached the respondent for constructing commercial building. The respondent refused to grant permission. Thereafter, he approached the Corporation of Chennai for reclassification of the site in T.S.No.74, Block No.37 of Kottur Village at Door No.19, I Main Road, Gandhi Nagar, Adyar, Chennai 20, from primary residential use zone to mixed residential use zone. The Corporation recommended for mixed residential zone in their proceedings dated 01.12.1995 to the respondent.

3. After calling for objection regarding reclassification, the respondent approved the reclassification of the site into mixed residential zone on 26.03.1996 and sent an intimation to the petitioner by letter dated 09.04.1996. After reclassification, the petitioner, in order to develop the suit property, submitted a construction plan for approval along with scrutiny fee. Once again his request was turned down. Meanwhile, a notification was published in the Tamil Nadu Government gazette on 18.06.1997. After publication of the reclassification, the petitioner submitted an application for planning permission for the same site on 07.07.1997 to the respondent. Again his request was turned down, citing certain irregularities. Accordingly, on 07.08.1997, the petitioner, resubmitted a revised plan for the proposed construction, after rectifying the violations. Again, on 28.08.1997, the respondent returned the planning permission application, citing some irregularities and some alterations in the plan. The petitioner, on 10.09.1997, again resubmitted a revised plan, rectifying the violations. Again, the same was rejected by the respondent. The respondent thrice returned the planning permission of the petitioner by citing violation of Floor Space Index (FSI). In view of the same, the petitioner submitted a petition on 15.10.1997 to the Vice Chairman of the respondent, with a request to approve the plan. However, by letter dated 10.11.1997, the respondent rejected the application stating that the Development Control Rules (DCR) has been amended restricting the allowable FSI for commercial development to 1.50 m., hence the petitioner's request to consider the proposal with FSI 2.00 m. is not acceptable. The amendment of Rule issued in G.O.Ms.No.305 Housing and Urban Development dated 10.09.1997 is not having any retrospective effect, and applying the amended Rule with retrospective effect in so far as the petitioner's application for planning permission which was made long earlier is totally illegal, unreasonable and without jurisdiction. Hence, he filed the present writ petition.

4. Pursuant to the notice ordered by this Court, the respondent filed a counter affidavit controverting the averments made in the affidavit filed by the petitioner. It is stated that the petitioner's request for reclassification was examined, placed it before the Technical Committee and considered it for re-classification of the site from Primary Residential use to Mixed Residential use and the same was informed to the

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petitioner by the respondent in their letter dated 09.04.1996. Before the same is published in the gazette, the petitioner submitted his planning permission application, hence, it was returned unapproved. Since reclassification was not given effect by gazette notification, the application of the petitioner was considered and found that there were violations in respect of Development Control Rules. The maximum FSI allowable was only 2.00 m. during the submission of planning permission application by the petitioner and the plan submitted then was in violation of DCR. Again, the petitioner resubmitted the same on 07.08.1997, which was also examined and returned unapproved. The petitioner once again submitted his proposal on 10.09.1997, and the same was also examined with reference to the amended Development Control Rules, whether the maximum permissible FSI has been reduced from 2.00 m. to 1.50 m. and returned unapproved by proceedings dated 11.10.1997.

5. In the light of the above pleadings, we heard the learned counsel for the petitioner as well as the respondents.

6. The learned counsel for the petitioner mainly contended that though the petitioner's planning permission which was resubmitted as required by the respondent has well within the Development Control Rules then in existence, the present Rule requires FSI of 2.00 m. We have already referred to the application made by the petitioner on various dates, the orders passed by the respondent, giving their reasons for not granting approval for the planning permission. No doubt, on the request/advise of the Corporation of Chennai, the area was reclassified from Primary Residential use to Mixed Residential use. However, it is not in dispute that unless the same is notified in the gazette, the same cannot be given effect to. It is also brought to our notice that at every occasion, the respondent after pointing out the defect/violations, returned the application of the petitioner with a request to rectify the same and resubmit thereafter.

7. We verified the orders / letters of the respondent informing the same at every occasion. When finally, the petitioner submitted his proposal on 10.09.1997, the said application was examined by the respondent with reference to the amended Development Control Rules, which were in force the maximum permissible FSI has been reduced from 2.00 to 1.50 m. and because of the same his application was returned as unapproved and the same was intimated to the petitioner by way of letter dated 01.10.1997. Though the petitioner has grievance against the respondent complaining that on each occasion deliberately refer some defects and returned his application for approval of the plan, as stated earlier, every time, the respondent pointed out the defects / violations with a request to rectify the same. In such circumstances, the action of the respondent cannot be blamed. It is also brought to our notice that after reclassification and gazette notification, according to the respondent, the petitioner submitted plans in violation of DCR in spite of informing the correct position to the petitioner. Considering the real position

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prevailing on the relevant date and of the fact that each and every application of the petitioner was considered by the respondent and returned after finding that it does not satisfy the requirements, the action of the respondents cannot be faulted with. We are satisfied that the petitioner did not furnish the plan satisfying the DCR in spite of pointing out the violations or defects by the respondent. In such circumstances, the impugned proceedings / letters cannot be interfered by this Court.

Net result, the writ petition fails and the same is dismissed. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

The Member Secretary
Chennai Metropolitan Development
Authority, Thalamuthu Natarajan
Maligai, No.8, Gandhi Irwin Salai
Egmore, Chennai 8.

1 cc To Mr.M.Basker, Advocate, SR.53232.
1 cc To Mr.J.Racindran, Advocate, SR.54106.

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RVL 05.12.2006

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